

Message Text

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ACTION L-03

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CIAE-00 DODE-00 INR-07 NSAE-00 PA-01 USIA-06 PRS-01

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R 271817Z JAN 76

FM AMCONSUL RIO DE JANEIRO

TO SECSTATE WASHDC 3271

INFO AMEMBASSY BRASILIA

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FROM RUBIN FOR L/ARA

EO 11652: NA

TAGS: OTRA

SUBJ: RESUME OF WORK OF INTER-AMERICAN JURIDICAL COMMITTEE
TO JANUARY 23, 1976

1. COMMITTEE SPENT MOST OF WEEK OF JAN 19, 76 AND BEGINNING THIS
WEEK ON ADMINISTRATIVE MATTERS. FOLLOWING ITEMS WORTH NOTING:

2. AT PREVIOUS PERIOD OF SESSIONS, COMMITTEE ENTRUSTED RUIZ
ELDREDGE (PERU) WITH TASK OF DRAFTING POSSIBLE CONVENTION ON
MULTINATIONAL ENTERPRISE, ALTHOUGH CONSIDERABLE SKEPTICISM
THEN EXPRESSED BY MYSELF AND SOME OTHERS AS TO FEASIBILITY OF
SUCH A "CONVENTION". AT THE SESSION OF JANUARY 19, A "PROYECTO
DE CONVENCION" WAS PRESENTED. AFTER PRELIMINARY REFERENCE TO
VARIOUS DOCUMENTS, INCLUDING THE UN SECURITY COUNCIL RESOLUTION
330 OF MARCH 1973, THE EMINENT PERSONS REPORT, THE CHARTER OF
ECONOMIC RIGHTS AND DUTIES, ETC., THE PROYECTO READS AS FOLLOWS:
QUOTE: A) LOS ESTADOS MIEMBROS SE COMPROMETEN A DICTAR DISPOS-
ICIONES PARA IMPEDIR Y SANCIONAR LOS ACTOS DE AQUELLAS EMPRESAS
TRANSNACIONALES QUE, DIRECTA O INDIRECTAMENTE, INTERFIERAN O
PRETENDAN INTERFERIR EN ASUNTOS QUE ATANEN A LA SOBERANIA DE
CUALQUIERA DE LOS ESTADOS CONTRATANTES;

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B) LOS ESTADOS SE FACILITARAN RECIPROCAMENTE LA INFORMACION

PERTINENTE SOBRE LAS ACTIVIDADES DE CUALQUIERA EMPRESA TRANS-
NACIONAL CUANDO ASI LO SOLICITE ALGUNO DE ELLOS.

LA SECRETARIA GENERAL DE LA OEA ABRIRA UN CENTRO DE INFOR-
MACION DE LAS CITADAS EMPRESAS TRANSNACIONALES;

C) LOS ESTADOS MIEMBROS SE COMPROMETEN A IMPEDIR CONFORME A
SU ACTUAL DERECHO INTERNO O DICTANDO NUEVAS DISPOSICIONES AL
RESPECTO, TODA ACTIVIDAD EMPRESARIAL TRANSNACIONAL QUE PUEDA
CAUSAR UN PERJUICIO A OTRA ESTADO;

D) LA DENUNCIA DE CUALQUIER ESTADO CONTRA UNA EMPRESA TRANS-
NACIONAL FORMULADA ANTE LA SECRETRIA GENERAL DE LA OEA, SERA
PUESTA DE INMEDIATO EN CONOCIMIENTO DE LOS DEMAS ESTADOS, PARA
SU DEBIDO EXAMEN Y TOMAR, LUEGO, LAS MEDIDAS A QUE ALUDEN LOS
ARTICULOS UNO Y DOS;

E) LA DENUNCIA DE UN ESTADO OBLIGARA A UNA REUNION INMEDIATA
DEL CONSEJO DE LA ORGANIZACION CON EL OBJETO DE TOMAR LAS MEDIDAS
ESPECIALES QUE EL AGRAVIO REQUIERA;

F) LOS ESTADOS MIEMBROS CANCELARAN LA LICENCIA, REGISTRO Y TODO
PERMISO DE ACTIVIDADES A LAS EMPRESAS TRANSNACIONALES QUE SEAN
ENCONTRADAS RESPONSABLES DE ALGUNA INTERFERENCIA CONTRA LA
SOBERANIA DE UN ESTADO MIEMBRO, SEGUN ACUERDO DEL CONSEJO DE LA
OEA. END QUOTE (FULL TEXT BEING SENT.)

3. IN THE DISCUSSION WHICH WAS RELATIVELY BRIEF, RUIZ ELDREDGE
STRESSED THAT THE PROJECT RESTED ON THREE SIMPLE BASES: THAT
STATES WOULD HAVE TO ADOPT THEIR OWN REGULATIONS; THAT THERE
WOULD HAVE TO BE AN INFORMATION CENTER; AND THAT THERE WOULD HAVE
TO BE COOPERATION BETWEEN STATES. I SUGGESTED THAT, THOUGH I
HAD NOT HAD AN OPPORTUNITY TO READ THE PROYECTO (WHICH WAS
NOT ACTUALLY MADE AVAILABLE UNTIL THE FOLLOWING DAY) IT PRESENTED
SUBSTANTIAL DIFFICULTIES, BOTH IN REGARD TO THE ACQUISITION
AND ANALYSIS OF INFORMATION, AND WITH REGARD TO INTERGOVERNMENTAL
COMMITMENTS IN THIS AREA. I ALSO SUGGESTED THE RELEVANCE OF UN
CONSIDERATION OF SOMEWHAT SAME SUBJECT, AND POINTED OUT THAT
AT LEAST ONE FUNDAMENTAL DOCUMENT CITED BY RUIZ ELDREDGE WAS NOT
ACCEPTABLE TO UNITED STATES (CERDS) PRECISELY BECAUSE IT DID NOT
CONTAIN COMMITMENT TO INTERNATIONAL LAW. ALSO MENTIONED THAT
EVEN LDCS IN UN SEEMED NOT UNITED ON IDEA OF OBLIGATORY CODE OF
CONDUCT. URUGUAYAN MEMBER (RICALDONIE) STRESSED DESIRABILITY
OF A CONVENTION BUT THEN SEEMED TO RETREAT IN DISCUSSION OF CODE
OF CONDUCT. ALSO EMPHASIZED NECESSITY TO STICK WITH LEGAL NORMS.
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GOMEZ ROBLEDO (MEXICO) STATED THAT HE THOUGHT A CONVENTION
IMPRACTICAL AND WOULD PREFER A SIMPLE DECLARATION OF STANDARDS
OR NORMS AS A CODE OF CONDUCT. COMMITTEE THEN, ON PROPOSAL OF
BRAZILIAN (PRADO KELLY), DECIDED TO POSTPONE DISCUSSION UNTIL
AFTER CONSIDERATION OF PAPER THEN BEING PREPARED BY CHAIRMAN,
WHO IS PREPARING A "DICTAMEN" RESUMING THE WORK OF THE COMMITTEE
RE MNCS (MULTINATIONAL CORPORATIONS) OVER PAST YEARS.

4. AT SESSION OF JANUARY 26, COMMITTEE DECIDED TO POSTPONE FURTHER DISCUSSION ADMINISTRATIVE MATTERS AND TO START WITH DISCUSSION CHAIRMAN'S PAPER ETC. TODAY.

5. I SHALL SUGGEST THAT SINCE THREE MEMBERS HAVE NOT AS YET APPEARED, SOME HAVE TO LEAVE AT END WEEK, ETC., COMMITTEE CONFINE ITS WORK THIS SESSION TO DISCUSSION, PERHAPS TO ENDORSEMENT IDEA OF CODE OF CONDUCT, AND RESUME TOPIC AFTER MARCH UNTNC COMMISSION RESULTS ARE KNOWN.

6. DURING INTERSESSIONAL PERIOD I HAD PROTESTED TO CHAIRMAN MANNER IN WHICH RESOLUTION RE PANAMA CANAL WAS PUT ON AGENDA AND PASSED IN AUGUST 1974 SESSION. I ALSO HAD PROPOSED AMENDING REGULATIONS OF COMMITTEE TO PROVIDE ADEQUATE NOTICE, ETC. DURING DISCUSSION OF PENDING SUGGESTIONS FOR PROCEDURAL AMENDMENTS ON JANUARY 23, MY ITEM CAME UP. I SUGGESTED STRONGLY THAT PANAMA RESOLUTION HAD BEEN INAPPROPRIATELY ADOPTED; THAT IT WAS NOT ON AGENDA, THOUGH PERPETUAL ITEM OF "TERRITORIAL COLONIALISM" WAS, AND THAT I HAD DISCUSSED MATTERS TO COME UP WITH MEMBERS PRIOR

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INFO OCT-01 ARA-06 ISO-00 IO-11 EB-07 COME-00 CIAE-00

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R 271817Z JAN 76

FM AMCONSUL RIO DE JANEIRO

TO SECSTATE WASHDC 3272

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TO MY DEPARTURE WITHOUT BEING NOTIFIED THIS ITEM. RUIZ ELDREDGE DEFENDED ON GROUND OF TERRITORIAL COLONIALISM ITEM, THOUGH HIS OWN EXPOSICION DE MOTIVOS NOTES THAT, HOWEVER THE ISSUES BETWEEN US AND PANAMA, THEY ARE NOT "STRICTLY" THOSE OF COLONIALISM. I ALSO SUGGESTED, BASED BOTH ON PANAMA AND ON MALVINAS (FALKLAND)

ISLANDS RESOLUTION (NOTED IN PARA 4 HEREIN) THAT COMMITTEE SHOULD ABSTAIN FROM ACTING AS A COURT OR ARBITRAL TRIBUNAL, CONFINE ITSELF TO BROAD ISSUES OF INTERNATIONAL LAW, AND NOT TO APPLICATION OF SUCH LAW TO SPECIFIC FACT SITUATIONS. IN THIS REGARD, I ADVERTED TO "VOTO RAZONADO" OF ARGENTINE MEMBER RE PANAMA, THAT COMMITTEE SHOULD NOT INTERVENE IN "MATTERS OF CONTROVERSY BETWEEN MEMBERS OF THE OAS".

7. AT CONCLUSION, IT WAS SUGGESTED I DRAFT SPECIFIC AMENDMENTS FOR IMMEDIATE CONSIDERATION. I STATED I WOULD DRAFT SUCH AMENDMENTS BUT, CONSISTENT WITH MY POSITION THAT MEMBERS SHOULD HAVE OPPORTUNITY TO STUDY POSITION PAPERS AND DRAFT RESOLUTIONS, I WOULD ASK THAT MY PROPOSALS BE TAKEN UP AT NEXT PERIOD OF SESSIONS. I SHALL PROPOSE AMENDMENTS SUGGESTING THAT EXCEPT IN EMERGENCY SITUATIONS ADEQUATE NOTICE, TIME FOR STUDY, ETC., BE GIVEN RE ALL MATTERS BEFORE COMMITTEE; AND PROBABLY NOTING DESIRABILITY COMMITTEE AVOID ENTERING INTO ANY CONTROVERSIES (WHETHER BETWEEN AMERICAN REPUBLICS OR ELSEWHERE WHICH HAVE CHARACTER OF JUDICIAL OR ARBITRAL "CASE OR CONTROVERSY" DECISION. LIMITED OFFICIAL USE

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8. ON JANUARY 16, AGAIN WITHOUT ANY NOTICE ON AGENDA (DESPITE PRESENT REGULATION STATING THAT AGENDA IS TO BE PREPARED AT END OF EACH SESSION FOR NEXT ONE), ARGENTINE MEMBER (IRONICALLY IN VIEW HIS POSITION RE PANAMA CANAL RESOLUTION) PROPOSED AND HAD ENACTED RESOLUTION ENDORSING ARGENTINE POSITION RE FALKLAND (MALVINAS) ISLANDS. THIS RECEIVED FAVORABLE PUBLICITY IN ARGENTINE PRESS AND ELICITED CABLE OF CONGRATULATIONS FROM ARGENTINE FONMIN. I HAVE QUESTIONED PROPRIETY OF THIS RESOLUTION IN COMMITTEE, THOUGH NOT WITH STRESS GIVEN TO PANAMA. AJA ESPIL (ARGENTINE MEMBER) JUSTIFIES ON BASIS DIFFERENCE BETWEEN DISPUTES AMONG OAS MEMBERS AND "DEFENSE OF CONTINENT" FROM OUTSIDE INTERFERENCE. I HAVE SUGGESTED MAINLY OUTSIDE FORMAL SESSIONS THAT ISSUE OF A JUDICIAL DECISION WITHOUT SUBMISSION OF CONTROVERSY BY EITHER SIDE, AND WITHOUT OPPORTUNITY TO BE HEARD, REMAINS. TEXT MALVINAS RESOLUTION BEING SENT SEPARATELY.

9. IN CONTEXT BOTH PARAS 3 AND 4 ABOVE, IT IS CLEAR COMMITTEE RELUCTANT TO GAINSAY ANY NON-USA MEMBER WHO HAS SPECIAL INTEREST TO PLEAD AND CAN MAKE SOME KIND OF CASE. PANAMA WAS CONCESSION TO PANAMANIAN MEMBER WHO WANTED SOMETHING TO TAKE BACK; MALVINAS RESOLUTION PROBABLY AFFECTED BY FACT THAT AJA ESPIL IS UP FOR REELECTION (WHICH INCIDENTALLY I WOULD FAVOR, AS HE IS INTELLIGENT AND FRIENDLY).

10. OTHER ITEMS:

A) SUGGESTION HAS APPARENTLY BEEN MADE DURING COURSE OF OAS DISCUSSION OF CHARTER REFORM THAT JURIDICAL COMMITTEE BE INCREASED

IN NUMBER TO GIVE EACH OAS MEMBER REPRESENTATION. I STATED THAT I HOPED THAT JURIDICAL COMMITTEE WOULD OPPOSE THIS. I MENTIONED COLLEGIAL AND EXPERT NATURE OF COMMITTEE AT PRESENT AS BASIS. I DID NOT SAY, BUT DO FEEL, THAT SUCH INCREASE IN SIZE WOULD BE NOT ONLY UNNECESSARY EXPENSE, BUT WOULD ALSO DESTROY WHATEVER HOPE OF COMMITTEE BEING REASONABLY EFFECTIVE WORKING GROUP - AT LEAST ON SUCH ISSUES AS INTERNATIONAL PRIVATE LAW - NOW EXISTS;

B) AN ITEM ENTITLED ROLE OF LAW IN SOCIAL CHANGE WAS DISCUSSED EARLY IN WEEK. COMMITTEE EXPRESSED INTEREST BUT DECIDED TAKE NO ACTION AWAITING FURTHER REPORT OF RAPPORTEUR, WHO IS I.
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11. AGENDA STILL CALLS FOR DISCUSSION PROPOSAL RE EXTRADITION. NEITHER THE LATTER PROPOSAL NOR ITS RAPPORTEUR (MATERNO VASQUEZ) HAS YET ARRIVED IN RIO.
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